

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
UNITED STATES OF AMERICA,
Plaintiff, No. 1:14cr6
vs.
DERIK EUGENE ROTHROCK,
Defendant.

Before:

THE HONORABLE JANET NEFF,
U.S. District Judge
Grand Rapids, Michigan
Monday, July 14, 2014
Sentencing Proceedings

APPEARANCES:

MR. PATRICK MILES, U.S. ATTORNEY
By: MS. TESSA HESSMILLER
The Law Building
330 Ionia Avenue, NW
Grand Rapids, MI 49501-0208
616-456-2404

On behalf of the Plaintiff;

FEDERAL PUBLIC DEFENDERS
By: MS. SHARON A. TUREK
50 Louis Street, NW
Suite 300
Grand Rapids, MI 49503
616-742-7420

On behalf of the Defendant.

REPORTED BY: MS. KATHY J. ANDERSON, RPR, FCRR

July 14, 2014

PROCEEDINGS, 11:04 a.m.

3 THE CLERK: All rise, please. This court is now in
4 session. Please be seated.

5 THE COURT: Good morning, everybody.

6 MS. HESSMILLER: Good morning, Your Honor.

7 MS. TUREK: Good morning, Your Honor.

11 Counsel, may I have appearances and introductions,
12 please.

13 MS. HESSMILLER: Good morning, Your Honor.

14 Tessa Hessmiller representing the United States. And I'm here
15 with Special Agent Kurt Schichtel from the FBI.

16 THE COURT: Thank you.

17 MS. TUREK: Good morning, Your Honor. Sharon Turek on
18 behalf of Mr. Rothrock who is seated to my left.

19 THE COURT: Thank you. Also present in the courtroom
20 this morning is United States Probation Officer Anna Pakiela.

21 Mr. Rothrock appeared before Magistrate Judge Timothy
22 Greeley on March 7, 2014, and entered a guilty plea to a single
23 count superseding felony information with a supplement, as well
24 as with a forfeiture count, pleading guilty to the charge of
25 receipt of child pornography which is contrary to 18 U.S.C.

1 2252A(a) (2) (A), and 18 U.S.C. 2252A(b) (1). The maximum
2 potential penalties for that offense include a 15-year
3 mandatory minimum sentence to a 40-year maximum sentence of
4 custody, as well as a maximum potential fine of \$250,000.

5 In spite of the seriousness of this offense, it can be
6 fairly easily summarized as follows: The offense behavior
7 involved the defendant communicating via text messaging on a
8 cell phone, as well as having sexual contact with girls he knew
9 to be 15 years old or younger. In addition to the sexual
10 contact, he requested and they sent photos of themselves to him
11 of a sexual nature including photographs of their pubic areas
12 and of them fully naked.

13 His texts to these girls were of a very salacious
14 sexual nature.

15 The magistrate judge's report and recommendation was
16 adopted on March 27, 2014. There is a plea agreement in this
17 case and I accept it at this time and I find that the charge to
18 which Mr. Rothrock entered a guilty plea adequately does
19 reflect the seriousness of his actual offense behavior.

20 There is also a detailed presentence report.

21 Ms. Hessmiller, does the government have any issues
22 involving the facts as recited in the report?

23 MS. HESSMILLER: No, Your Honor.

24 THE COURT: Ms. Turek, on behalf of the defendant, any
25 factual issues with regard to the recitation of the report?

1 MS. TUREK: Other than what's already been noted, Your
2 Honor.

3 THE COURT: Okay. And those were worked out with the
4 probation officer, is that correct?

5 MS. TUREK: That is correct, Your Honor.

6 THE COURT: Thank you. Mr. Rothrock, a couple of
7 questions for you. Have you read the presentence report?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And have you discussed it thoroughly and
10 carefully with Ms. Turek?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And as you sit here in the courtroom this
13 morning, is there anything about the presentence report that
14 you either don't understand or about which you still have any
15 question?

16 THE DEFENDANT: No, no, Your Honor.

17 THE COURT: Now, Ms. Turek from the Federal Public
18 Defender office has been appointed to represent you. Have you
19 been satisfied with the work that she has done on your behalf?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Okay. The presentence report contains a
22 calculation of the guidelines and the advisory guidelines
23 ranges as follows: The offense level is calculated at 39, the
24 scoring in this case is a little bit unusual; although it is a
25 single count information, it does involve three separate

1 victims, and because of that, it was scored in three separate
2 segments. But the bottom line is that the probation officer's
3 offense level, total offense level is 39. Criminal History
4 Category is 5 owing to the sexual assault supplement, and those
5 numbers of course place the defendant in Zone D of the grid
6 where the incarceration range would be 360 months to life, but
7 because the statutory maximum here is 480 months, the effective
8 advisory guidelines range becomes 360 months to 480 months.
9 The supervised release range is five years to life, the fine
10 range is 25,000 to \$250,000. My understanding is that there
11 have been no requests for restitution by any of the victims.
12 Am I correct about that, Ms. Hessmiller?

13 MS. HESSMILLER: Yes, Your Honor.

14 THE COURT: Thank you. And there is a mandatory
15 special assessment of \$100.

16 Now, there are no objections to the scoring, is that
17 correct, Ms. Turek?

18 MS. TUREK: That is correct, Your Honor.

19 THE COURT: Thank you. My calculation of the scoring
20 is just slightly different from that of the probation officer
21 as a result of my policy differences with the Sentencing
22 Commission. I do not score the two-offense level enhancement
23 for use of a computer for reasons that I have explained on
24 numerous occasions, but essentially, because it is clear that
25 this offense is one that is in this day and age committed

1 exclusively, well, perhaps not exclusively, but almost, through
2 the use of electronic devices like computers and Smart phones
3 and so forth. And so my calculation of the total offense level
4 is 37, which really doesn't have an effect on the overall
5 scoring. I'm sorry, 38, I beg your pardon. Is that right,
6 Anna, is it 37 or 38?

7 PROBATION OFFICER: It is, Your Honor, because an
8 additional unit is added due to the lack of disparity between
9 the three different offenses. 38 would be the correct.

10 THE COURT: Thank you. So the, the change in the
11 offense level is to 38, Criminal History Category remains 5,
12 and the rest of the numbers are all the same.

13 The custody advisory guidance, advisory range is 360
14 to 480 months; the range for supervised release is five years
15 to life; and the fine range remains at 25,000 to \$250,000.

16 There were no, nothing in any of the, in either of the
17 sentencing memos or anything else that I saw indicated any
18 request for a guidelines departure, is that correct,
19 Ms. Hessmiller?

20 MS. HESSMILLER: Correct, Your Honor.

21 MS. TUREK: Yes, Your Honor.

22 THE COURT: Thank you. And I assume that the
23 government does move for the one offense level reduction for a
24 timely plea.

25 MS. HESSMILLER: Yes, Your Honor.

1 THE COURT: Okay. So we are left then with offense
2 level, advisory guidelines based on offense level 38, Criminal
3 History Category 5, incarceration 360 to 480 months, supervised
4 release five years to life, fine range 25,000 to \$250,000.

5 Now, are counsel in agreement with the accuracy of
6 those calculations?

7 MS. HESSMILLER: I'm a little unclear, Your Honor, on
8 the 38 versus 37 that Ms. Pakiela was addressing, the lack of
9 disparity because of the two victims. Perhaps a little
10 clarification on the record would be helpful on that point.

11 THE COURT: I think the probation officer can probably
12 explain that better than I can.

13 PROBATION OFFICER: Based on the multiple count
14 adjustment that falls under counts on this case, he originally
15 received only two units as a result of the difference in
16 offense levels of -- the three counts technically had offense
17 levels of 40, 40 and 38, correct? Yes. But because of the
18 scoring change those numbers become less and it becomes an
19 offense level of 38 because there is now three units instead of
20 two. It would have been two given the difference in the
21 scoring levels on each of those counts.

22 THE COURT: Does that make sense?

23 MS. HESSMILLER: It doesn't make sense to me because
24 I'm not that familiar with that provision of it. But probation
25 has a grip on it it sounds like. I don't know if Ms. Turek has

1 further questions on that or is satisfied with that
2 calculation.

3 THE COURT: I'm kind of with you, Ms. Hessmiller. I
4 would have deducted the two-offense levels from the total
5 offense level of 39 to get to 37. But I'm not sure how that is
6 impacted by the multiple count adjustment, if it is. And in
7 the end, the advisory ranges remain the same.

8 PROBATION OFFICER: At 37, Your Honor, it would be 324
9 to 405.

10 THE COURT: Okay. Can you then perhaps help us
11 understand why it is 38 and not 37?

12 PROBATION OFFICER: I have a printout if that would be
13 helpful for the parties to review.

14 THE COURT: Okay.

15 PROBATION OFFICER: But essentially with the multiple
16 count adjustment, we have to look at the difference between
17 each offense. And when you calculate it out, it was assigned
18 two units at the original calculation when each count had the
19 additional two points, you'll see paragraph 91 where it's 40,
20 40, and 38 and it results in a number two units.

21 THE COURT: Okay.

22 PROBATION OFFICER: Because it's within a certain
23 amount from each one. When you redo it with the different
24 scoring, each one of those at 38, 38 and 36, each qualifies for
25 a unit. Because it's within the highest adjusted offense level

1 is 38, plus the three, puts it at the 41, minus the three for
2 38. And this is not helping at all.

3 THE COURT: I think, I think I see what you're saying,
4 though. If we go back to paragraph 91.

5 PROBATION OFFICER: Yes.

6 THE COURT: And the 40, 40 and 38 adjusted offense
7 levels become 38, 38 and 36.

8 PROBATION OFFICER: Correct.

9 THE COURT: Because of taking out the computer use.

10 PROBATION OFFICER: Correct.

11 THE COURT: And then go from there. So that leaves us
12 at -- at paragraph 92, the greater of the adjusted offense
13 levels becomes 38, right?

14 PROBATION OFFICER: Yes.

15 THE COURT: Then we increase that by two.

16 PROBATION OFFICER: By the number of units.

17 THE COURT: So it becomes 40.

18 PROBATION OFFICER: No. It becomes, there is three
19 units added in the recalculation instead of two.

20 THE COURT: Why?

21 PROBATION OFFICER: I'm finding you that --

22 MS. TUREK: I think it's 3D1.4(a).

23 PROBATION OFFICER: Yes. Thank you, Sharon. When you
24 look at 3D1.4, which is page 363 of the guidelines manual, the
25 number of units indicates how many, increase in how many points

1 are added to the offense level. Two units you only add two
2 points, and two and a half to three units you would add three
3 points.

4 THE COURT: Well, then how do we get from two units to
5 three units?

6 MS. TUREK: I think it's two -- may I have a moment,
7 Your Honor?

8 THE COURT: Certainly.

9 PROBATION OFFICER: Your Honor, I think that's correct
10 that it is 37.

11 THE COURT: Oh.

12 PROBATION OFFICER: We have a program that calculates
13 it for us and I think it did not calculate it correctly. So it
14 makes sense that it would be 37.

15 THE COURT: Okay. Let's go back then. At 37 and
16 Criminal History Category 5, we are looking at 324, the
17 incarceration range would be 324 to 405, the supervised release
18 range remains five years to life, the fine range I think
19 remains the same -- no, it becomes 20,000 to 200,000.

20 Now, again, are we comfortable with the accuracy of
21 those calculations?

22 MS. HESSMILLER: Yes, Your Honor, if the Court is
23 deleting the two points for the use of a computer.

24 THE COURT: Yes.

25 MS. TUREK: Yes, Your Honor.

1 THE COURT: Thank you. Ms. Turek, are you ready for
2 your allocution?

3 MS. TUREK: I am, Your Honor. Your Honor, as I
4 should, I'm going to be talking a lot about Mr. Rothrock. But
5 before I do that, you know, that does not mean that he nor I
6 consider the offense, the conduct anything less than
7 reprehensible. And it's detailed in the presentence report.

14 That I think just really touches the iceberg as far as
15 how bad things were for him when he was growing up. This is
16 not a case of someone being in poverty, although there was
17 that; this is a case where someone was born into a family with
18 a history of mental health issues. He was born into a family
19 who neglected him, who sexually abused him, who physically
20 abused him, all the, all the things that you don't associate
21 with a nurturing environment.

1 records, although they don't dispute them, they just no longer
2 have them. We had also contacted the juvenile court, and they
3 also believe that they no longer had the files.

4 But we do have some of the information from earlier
5 presentence reports which Ms. Pakiela included in her report.
6 We have the Pine Rest records, and we have, at least I have had
7 the opportunity to discuss in more detail with Mr. Rothrock
8 some of his experiences as a child. Although I must say that
9 he doesn't like to talk about it, and frankly, the only way I
10 was able to get more detail is, I know it was difficult for him
11 to talk about it, so I asked him to write me a letter and just
12 talk about some of the things that occurred in his lifetime.

13 And I think most troubling is the sexual abuse that
14 was going on within his family. The most devastating thing was
15 to hear that Mr. Rothrock's own mother would masturbate him and
16 arouse him, which is something that I have never, as with the
17 many clients I have had and the horrendous circumstances that
18 they have had to live their lives, I have never had anything
19 like that or heard anything like that.

20 But it's more than that, Your Honor. When
21 Mr. Rothrock was born it's clear that he suffers from ADHD. It
22 was true back when the Pine Rest record was made when he was 14
23 years old; it's true today. If you try to have a discussion
24 with Mr. Rothrock, you have to be aware of that, and you have
25 to go over things a number of times because it is very hard for

1 him to maintain focus.

2 There is substance abuse, alcohol, drugs. There were,
3 was mental illness. His, and it's hereditary; both his
4 maternal grandmother and his mother have a history of mental
5 illness.

6 And so with that as a back drop, this young man was
7 raised, born and raised into that household, although, he was
8 abandoned a lot of the time too. And that resulted in even
9 being in more abusive, being in harms way any number of times
10 because his mother would often leave him with strangers; even
11 when she was in a relationship with an individual, his
12 stepfather, for instance, Mr. Goudy, was abusive, was
13 physically abusive.

14 So that's kind of the back drop. And so with that,
15 Mr. Rothrock has had the history that he has.

16 He understands that he has issues with sexual
17 relationships and not being able to respect boundaries. But I
18 don't think he's understood how to deal with that. He knows he
19 needs treatment. He also suffers from, as I've said, mental
20 illness. He suffers from depression on a regular basis still.
21 That was the circumstance back in 1994 when he was at Pine
22 Rest, and that's still the situation today.

23 He has, he has some limitations on his ability to read
24 and write. And I think he's often been at a loss as far as how
25 to live his life in a way that is appropriate and in a way

1 that's respectful to others.

2 He is, he understands that the Court has no choice but
3 to impose a significant period of incarceration today, and he
4 accepts that. But he wants this Court to know, he wants you to
5 know that he is open to treatment, that he wants treatment, and
6 he wants to still try to make a life. There was a two-year
7 period I believe from 2010 to 2012 where he was having some
8 success. This was after he was released from prison after a
9 parole violation. He got married, and he was doing, there
10 seems to be no criminal history. He was working, and he held
11 that job for two years. When his marriage broke up, it seems
12 like the wheels kind of broke off and Mr. Rothrock began using
13 drugs and alcohol on a more frequent basis, and all the past
14 history of his difficulty with sexual boundaries came back.
15 And it has led him to where he's at today.

16 I have asked this Court to consider a variance in this
17 case. I think the abuse that he suffered as a child, in
18 addition to the other circumstances that were present, the
19 mental illness, the learning disability, the neglect and
20 abandonment by his parents, not just his mom at times but his
21 father has never been part of his life, all those circumstances
22 have contributed to the person that Mr. Rothrock is today. I
23 think Mr. Rothrock himself is a strong individual. I think
24 that he is sincere when he says that he wants treatment. I
25 know that he has made attempts in the past to live a life that

1 society expects of him. I think he can again one day do that
2 with the appropriate treatment, and I would ask this Court to
3 consider a variance from where we are at in the guidelines
4 right now, Your Honor, so that Mr. Rothrock will one day be
5 able to establish, reestablish himself in the community and
6 live a law abiding life and find some happiness for himself.
7 And I know that -- and by saying that I don't, again, want to
8 trivialize what occurred, but I would like to see at some point
9 Mr. Rothrock find some peace within himself and be able to live
10 on the outside and find some happiness after he's paid his debt
11 to society. Thank you.

12 THE COURT: Thank you, Ms. Turek. I have to say that
13 it's difficult to disagree with your evaluation of how
14 Mr. Rothrock got here. His history and background are truly
15 tragic. But I want it to be clear as well that my concerns are
16 that he is here and he is who he is, and the dangers that he
17 presents are not theoretical. I mean they are demonstrated.
18 And I just -- I do want the record to be clear that I, as I
19 said, I understand your position as his advocate, but also that
20 in terms of applying those circumstances to a potential
21 variance simply flies in the face of what I consider to be my
22 duty to protect the public, and particularly to young girls and
23 women. The history that Mr. Rothrock presents with in terms of
24 his inability to control his behavior and make it conform to
25 even the most basic expectations is very frightening. But I

1 do, I do credit your argument and understand what a difficult
2 position we're all in here.

3 MS. TUREK: And I appreciate that, Your Honor. And I
4 certainly am well aware that before you came out on the bench
5 here today that you would have those concerns. I think anyone
6 reading Mr. Rothrock's criminal history certainly would. And
7 they are well-founded; I can't disagree with that. But I would
8 also ask you to consider that I think even the mandatory
9 minimum in this case, and I'm not suggesting that is where the
10 sentence should be, but even that sentence is a significant
11 period of time where hopefully Mr. Rothrock will be undergoing
12 a lot of treatment to address not just the substance abuse
13 issues, the mental health issues, the mental illness issues,
14 but the sexual behavior issues that have led to that history of
15 assault.

16 So in that vein, Your Honor, with that anticipation of
17 a significant period of incarceration to go with treatment, I
18 think a variance of some sort would still, might still be
19 appropriate in this case, even given his history, with the idea
20 that he's going to be serving a long time of incarceration.

21 But also that he will be undergoing treatment, and on
22 supervision would be under rather tight constraints, I would
23 imagine. So with that I would ask the Court, I would ask you
24 to still consider a variance of some amount in this case.

25 THE COURT: Thank you for your comments.

1 MS. TUREK: Thank you.

2 THE COURT: Mr. Rothrock, at this point, and I'm sure
3 Ms. Turek has talked with you about this, but at this point if
4 you wish to speak in your own behalf to tell me anything that
5 you think I should consider before imposing sentence, you
6 certainly are entitled to do that. This is in fact your
7 sentencing, and if there's something, anything at all that you
8 wish to add, you may come to the podium with Ms. Turek.

9 THE DEFENDANT: I can't explain what I did. I am
10 sorry for what I did. Just Saturday I just found out my
11 12-year-old daughter got raped. I feel as a victim as well as
12 the predator in this situation. I don't clarify or justify or
13 plead for any mercy or anything because what I did was wrong.
14 I'm sick and tired of living the way I live. I thought I had a
15 right life when I was with my wife. I just fell off. There is
16 no explanation to it. I mean I feel sorry for the victims. I
17 apologize to them. The people who are involved, time wasted in
18 the court, the people I hurt. Mainly I let my daughter down.
19 My family won't talk to me no more because I'm admitting and
20 I'm putting everything out there as it was. Tired of being in
21 denial about what my family is going through.

22 I'm 35 years old. I mean, I should have grown up
23 before I went to prison the first time.

24 I don't know. I'm sorry. I mean I know that ain't
25 the best of words, the brightest words to say, but I really am;

1 for the first time, I am. You know, I got a lot of the
2 burdens; I got a lot of problems going on in my life; I've got
3 a lot the hurts, habits, and hang ups and they have been there
4 for years, and I thought I had them under control but I guess I
5 didn't. That's all I can really say.

6 THE COURT: Well, what I can say is that everybody
7 involved in this case hopes that you can find the kind of
8 treatment that you need that will help you but make all of us
9 safer as well. And I don't know what the outcome will be. And
10 I don't know whether the treatment you receive will benefit
11 you. But I certainly hope so. Thank you.

12 THE DEFENDANT: Thank you.

13 THE COURT: Ms. Hessmiller.

14 MS. HESSMILLER: Your Honor, Mr. Rothrock really
15 presents every parent's nightmare. He's age 34 at the time,
16 prior convicted sex offender, goes out for a long weekend to
17 visit a friend somewhere in Michigan and in a span of four days
18 accumulates three different victims ages 12, 14 and 15, two of
19 whom he had sex with.

20 Mr. Rothrock knew he was a prior convicted sex
21 offender. It's easily found on the Internet. Anybody with a
22 Smart phone can figure out someone is a prior convicted sex
23 offender, and on this long weekend to this town in Michigan,
24 Mr. Rothrock used a false name, he set up a false Facebook
25 profile under that false name, and he told these three victims

1 that he was 19 or 21 years old.

2 The third victim, minor number 3, was the only reason
3 that this came to light because minor number 3 was sitting in
4 her bedroom talking on the phone texting and sending sexually
5 explicit pictures of herself to the defendant when a parent
6 figure walked in and minor number 3 threw the phone, the parent
7 picked it up and figured out what was going on. From that
8 point onwards, the investigation was able to find minor number
9 1 and minor number 2 who had not come forward on their own.

10 So but for the parenting of minor number 3's parents
11 being able to find minor number 3's phone, these other victims
12 may not have even been known to law enforcement.

13 Even if Mr. Rothrock had been arrested and his phone
14 had been searched, he was using an application called Photo
15 Vault which is a secure way to password protect photos and even
16 provides a decoy password so that if someone asks for the
17 password to Photo Vault a user can give a decoy password and
18 show a separate set of photographs. Inside that Photo Vault
19 account were not only the sexually explicit images of these
20 three victims but also of numerous other young women, unknown;
21 they were not pre pubescent but young women, possibly
22 teenagers, possibly younger or slightly older.

23 While Mr. Rothrock was talking to minor number 3 while
24 she was in her bedroom late on the night of July 22, 2011,
25 Mr. Rothrock asked her by phone, was she a virgin, and where

1 does she live. The answers to both of which minor number 3
2 gave Mr. Rothrock over the phone.

3 This happened three months after the defendant was
4 acquitted at a criminal sexual conduct trial for having
5 multiple times having sexual intercourse with a 15-year-old
6 girl.

7 This is not an isolated incident. This is not a
8 one-time act of misjudgment. But this is a persistent,
9 selfish, narcissistic desire for sexual gratification from
10 easily manipulable young girls. These are the type of girls
11 who told Mr. Rothrock that they were having trouble with their
12 family, were over the moon to be told that they were cute or
13 sexy by Mr. Rothrock over text message. It didn't long for one
14 of the minors to say I love you, and Mr. Rothrock to say back
15 love you too. One of the minors even texted to her friend, "He
16 thinks I'm cute. Tehehe, I love him." These were easy
17 pickings for Mr. Rothrock in his desire to fulfill his sexual
18 gratification from the easiest possible victims.

19 Maybe Mr. Rothrock was sexually abused, and the
20 government certainly doesn't argue to the contrary. But now
21 Mr. Rothrock is sexually abusing others in multiples.

22 I know Your Honor has already made a decision on the
23 use of the computer. But this case may be different from the
24 routine case of receipt of child pornography where everyone who
25 receives child pornography now receives it over the computer.

1 In this case, the guidelines were calculated using the
2 production of child pornography guidelines under 2G2.1 rather
3 than the receipt of child pornography guidelines under 2G2.2.
4 And the use of the computer enhancement is slightly more
5 specific in the production of child pornography guidelines
6 under 2G2.1 in that they require in order for the two-point
7 enhancement to apply, it requires the person who is sexually
8 exploiting children to use a computer to entice and solicit a
9 child into sexually explicit conduct. And I point this out,
10 Your Honor, because that enhancement applies here and I think
11 it's important that it does apply here because the use of a
12 computer really does enhance and broaden the reach of sex
13 offenders like Mr. Rothrock. Because children now carry around
14 Smart phones or text message enabled phones, using a computer
15 such as a Smart phone to get into a child's house, to get into
16 a child's bedroom and get her to send sexually explicit photos
17 back really does broaden the scope of sex offenders and it
18 makes this crime so much easier to commit rather than grooming
19 a child and having in-person sexual contact and access to a
20 child.

21 So in addition, Your Honor, Mr. Rothrock has had
22 multiple opportunities to correct his course, not the least of
23 which was an eight and a half year term in prison, followed by
24 a parole violation for having a sexual relationship with a
25 minor and prohibited sexual contact with children, followed by

1 three and a half more years in prison, and release from prison
2 in 2009.

3 Followed shortly by the CSC trial in 2012, and
4 followed immediately by these July 2013 offenses.

5 So, Your Honor, I would request that the Court does
6 include the two-point enhancement for use of a computer because
7 they are calculated under the production of child pornography
8 guidelines rather than the standard receipt of child
9 pornography.

10 In the alternative, Your Honor, I would ask that the
11 Court impose an above guideline sentence justified for the need
12 to specifically deter this defendant and generally deter others
13 from using the same means and mechanisms to sexually exploit
14 children. I see Your Honor paging through the book. Did you
15 need me to clarify anything about the, what I was referring to,
16 Your Honor?

17 THE COURT: Well, what I guess what I would ask you,
18 and in my determination to reduce the scoring by the two
19 offense levels for enhancement for the use of a computer, which
20 is in line with my, as I indicated earlier, in line with my
21 policy that I set out pretty extensively in U.S. versus Inman
22 which was about a year or so ago, I guess what I would ask of
23 you is since this is a receipt case, whether you have some
24 authority for applying 2G, what is it?

25 MS. HESSMILLER: 2.1, Your Honor. Yes, Your Honor, I

1 do. And the presentence report actually in each of the
2 segments of calculating the guideline range refers to the cross
3 reference in 2G2.2(c) which states that, "If the offense
4 involved causing, transporting, permitting, or offering or
5 seeking by notice or advertisement, a minor to engage in
6 sexually explicit conduct for the purpose of producing a visual
7 depiction of such conduct or for the purpose of transmitting a
8 live visual depiction of such conduct, apply 2G2.1."

9 So even for the superseding information, which is
10 encompassed in paragraphs 68 through 65 of the presentence
11 report, it does note that the guidelines are calculated in this
12 case in all cases under 2G2.1.

13 And so the use of a computer enhancement that's
14 applied in paragraph 71 is actually the use of the computer
15 enhancement from the 2G2.1 child pornography production
16 section.

17 THE COURT: Well, it's an interesting argument, and it
18 may well be the better application of the guidelines in this
19 case. However, given the seriousness of the advisory range
20 already, which at 324 to 405 months is not significantly below
21 the 360 to 480 -- I wish we had had this. I should have given
22 you the opportunity to respond earlier when I was talking about
23 the scoring. But in any event, this is on the record and if
24 there is any question about it at some later time, then it can
25 be resolved then. But I really, again, the guidelines which

1 apply in child pornography cases are so, in my view, excessive,
2 and we end up with these numerous enhancements that may or may
3 not be accurately applied to the behavior in question, I'm
4 going to deny the objection and leave the scoring as it is.
5 And in the event that there is some correction of that at some
6 higher level, that's fine with me. But I do appreciate your
7 comments. It's certainly food for thought.

8 MS. HESSMILLER: Thank you, Your Honor.

9 THE COURT: Thank you. Well, the guidelines as they
10 have been outlined and argued here are in fact advisory, but I
11 do have to consult them and give them consideration in reaching
12 a sentencing decision which has to be reflective of the
13 underlying duty to impose a sentence which is sufficient but
14 not greater than necessary to comply with the purposes of
15 Section 3553(a).

16 And the sentencing calculus is in my view something
17 that reflects the law in many different contexts, and that is
18 that there must be some balance. And the balance that the
19 statute talks about first starts with looking at the crime
20 itself, and its seriousness, and then at the person who
21 committed the crime.

22 And here child pornography offenses in terms of their
23 seriousness are almost always very serious offenses. But the
24 facts of this case really do make it stand out from others. In
25 the first instance, the defendant had met these young girls at

1 this apartment complex. He contacted them via phone, his, the
2 language in his texts were almost painful to read when you
3 realize that these girls were the oldest was 15. And the
4 sexual contact, again, girls, the oldest of whom is 16. He
5 knew how old they were, approximately how old they were. He
6 admitted that in his plea.

7 His previous criminal sexual conduct conviction in
8 state court leading to, what, six or eight years of
9 incarceration, and very, very soon after his release on parole
10 he was right back at the same kind of behavior, assaulting,
11 sexually assaulting young girls.

12 So all of this behavior adds to the seriousness of
13 this offense because it is reflective of the fact that
14 Mr. Rothrock is prone to acting out on these, I don't know
15 whether they are impulses or what they are, but he acts out on
16 his -- his interest, his sexual interest in young girls. And
17 on a scale of one to ten in offenses for receipt of child
18 pornography, this one is at ten or above. I honestly have not
19 seen one more serious than this.

20 So that's the offense.

21 The history and characteristics of the defendant
22 really don't, don't balance that seriousness. Often that
23 happens. We see a serious offense but a person whose life
24 experience and behavior can balance that out. And that's not
25 the case here. Mr. Rothrock is a 35-year-old married man, has

1 one child who is a young daughter whom he does not see. He's a
2 9th grade dropout. His criminal history started at age 13.
3 And I, again, as I indicated to Ms. Turek, I do not for a
4 moment downplay the difficulty of his life in which he had no
5 stability; his father was not in the picture, his mother was
6 mentally ill, he was sexually abused, he moved frequently,
7 there was contact with Child Protective Services, there was
8 family violence. You can go on and on about Mr. Rothrock's
9 background. It's tragic.

10 But you lay that alongside of the fact that his prior
11 sex offense for which he was supplemented occurred when he was
12 just 17. And at that point he had had sex with a 13-year-old
13 girl, served eight years in prison and violated almost
14 immediately.

15 His life has been, as far as I can tell, out of
16 control pretty much his entire life. The government's
17 sentencing memo concludes that Mr. Rothrock is a sexual
18 predator, and frankly, that's hard to refute on these facts.
19 That's a phrase that has been used in other cases. I think
20 sometimes improvidently but in this case I think it is really
21 right on. And there is violence throughout his history, both
22 against him and by him. And so as Ms. Turek says, it's not
23 surprising that he should be here under these circumstances.
24 It's terribly sad. But it is not at all surprising.

25 After that attempt at balance, the statute goes on to

1 talk about what purposes do we hope to serve with sentencing.
2 And the three that stand out in this case, I think all of them
3 really apply, all five of them apply, but the three that stand
4 out are punishment, deterrence, and protection of the public.

5 Deterrence. Mr. Rothrock needs to be removed from
6 society to prevent him from preying on young girls. We need to
7 protect young girls from further crimes of Mr. Rothrock, and we
8 need to punish him for the crimes that he is here for. He
9 obviously also needs treatment, and at some point I would hope
10 that we could through treatment provide him with some glimmer
11 of a respect for the law.

12 So the question of whether the guidelines sentence,
13 the guidelines range is appropriate, is this a heartland, mine
14 run case. Do the guidelines reflect the statutory factors.
15 And I don't think so. I don't think this is a heartland case.
16 I think this is a really extraordinary case. And my own
17 independent view of the sentencing factors and all of the
18 sentencing file, starting with the original indictment, which I
19 think had six counts, reduced down to the superseding or second
20 superseding information suggests to me that the guidelines, as
21 high as they are, at 324 to 405 months, really don't achieve
22 the purposes set out in the statute. And, you know, the
23 request for a variance based on all of those factors in his
24 background do not, cannot trump the fact that Mr. Rothrock is a
25 serious danger to the public, and particularly to adolescent

1 girls. And, again, what I think is the most important
2 statutory factor is protection of the public. I think we have
3 got to remove him for a very long time from having any access
4 to young girls.

5 And so I am going to depart above the guidelines for
6 those reasons. And pursuant to the Sentencing Reform Act of
7 1984, it's my sentence that Mr. Rothrock serve 480 months
8 incarceration to be followed by supervised release for the rest
9 of his life subject to the standard conditions of reporting and
10 remaining law abiding. You know, in terms -- I just want to go
11 back one minute. In terms of the length of the sentence, I
12 would point out that Mr. Rothrock is a young man. He's only
13 35 years old. And the harm, the pain that he has caused in
14 that fairly short period of time suggests that the longer we
15 can keep him away from society in general and girls in
16 particular, the better we are.

17 So the supervised release subject to the standard
18 conditions of reporting and remaining law abiding. There were
19 some additional conditions. We provided an order regarding
20 those for counsel and Mr. Rothrock to review prior to this
21 hearing; both Mr. Rothrock and Ms. Turek have signed them
22 indicating they reviewed them and understand them. And I'm
23 signing that order for entry right now.

24 The fine in this case is waived. As indicated
25 earlier, restitution is not an issue. I order the mandatory

1 special assessment of \$100.

2 With regard to the Bureau of Prisons recommendation,
3 it's very clear that Mr. Rothrock needs intense programming in
4 many areas, including mental health and substance abuse
5 programming. He needs educational and vocational programming.
6 The latter he should at least make progress towards earning his
7 GED.

8 Is there any request for placement recommendation,
9 Ms. Turek?

10 MS. TUREK: No, Your Honor.

11 THE COURT: Thank you. The second superseding
12 information was a single count, but does the government move to
13 dismiss the counts of the underlying indictment?

14 MS. HESSMILLER: Yes, Your Honor.

15 THE COURT: That's granted. There is an indication in
16 the, I said second superseding felony information. It was just
17 a superseding, but there was a forfeiture allegation but I
18 don't see any order.

19 MS. HESSMILLER: Your Honor, I believe a preliminary
20 order of forfeiture was entered.

21 THE COURT: I don't even see that, Ms. Hessmiller.
22 Was it entered, Rick?

23 THE CLERK: That's correct. On April 7th.

24 THE COURT: April 7th, okay. We will need a final one
25 then at the government's convenience.

Are there any objections to the sentence that I have just announced, anything that's not already on the record which would argue that sentence should not be imposed as I've indicated?

MS. HESSMILLER: No, Your Honor.

THE COURT: Ms. Turek.

MS. TUREK: No, Your Honor.

THE COURT: Thank you. Mr. Rothrock, we do need to talk about your appellate rights which have been primarily waived in this case. I'm going to look for that paragraph. If I recall correctly, it's pretty extensive. It's paragraph 13 of your plea agreement. It is a pretty extensive waiver of your appellate rights with regard to the sentence I have just announced. But to the extent you retain any appellate rights, there are two things you need to understand this morning.

First of all, I guess it's afternoon now, first of all, a judgment is going to be entered on my sentence probably later today, and you'll have 14 days from when the judgment is entered to make up your mind whether you wish to pursue an appeal. And this is something you should carefully discuss with Ms. Turek. But you must tell her. You must let her know what you want to do with regard to an appeal. Secondly, if you do wish to pursue an appeal, Ms. Turek will have the obligation to represent you in that proceeding going forward. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. Before I remand you to the custody
3 of the federal marshal I do want to say to you that imposing a
4 sentence like this under these circumstances is very difficult.
5 I'm sure not as difficult as it is for you facing a long, long
6 time. But I hope that you can find some benefit, some
7 redemption in the time that you spend with the Bureau of
8 Prisons. I honestly can't imagine living in your head. I
9 think it must be very, very difficult. And I hope that at some
10 point you can come to grips with that and be, as Ms. Turek
11 indicates, someone who can find some measure of joy in life.

12 I am sorry that our society has failed you all these
13 years, and we have. I think we have had a number of
14 opportunities to make your life better and we didn't. And now
15 we are left with someone who is, as I said earlier, very
16 dangerous. And so I, I hope you can find some measure of
17 relief in the future. If there is nothing further,
18 Ms. Hessmiller.

19 MS. HESSMILLER: Nothing further, Your Honor. Thank
20 you.

21 THE COURT: Ms. Turek.

22 MS. TUREK: No, Your Honor. Thank you.

23 THE COURT: The defendant is remanded to the custody
24 of the United States marshal, and we are adjourned.

25 THE CLERK: All rise, please. This court is now

1 adjourned.

2 (Proceedings concluded, 12:12 p.m.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 REPORTER'S CERTIFICATE
23 I, Kathy J. Anderson, Official Court Reporter for the
4 United States District Court for the Western District of
5 Michigan, appointed pursuant to the provisions of Title 28,
6 United States Code, Section 753, do hereby certify that the
7 foregoing is a full, true and correct transcript of the
8 proceedings had in the within entitled and numbered cause on
9 the date hereinbefore set forth; and I do further certify that
10 the foregoing transcript has been prepared by me or under my
11 direction.12
13
14 /s/ Kathy J. Anderson15 Kathy J. Anderson, RPR, FCRR
16 U.S. District Court Reporter
17 412 Federal Building
18 Grand Rapids, Michigan 49503
19
20
21
22
23
24
25